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IN THE

Supreme Court of the United States

October Term, 1963

No. 2

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WILLIAM ALBERTSON and ROSCOE
QUINCY PROCTOR,

Petitioners,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

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**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

The petitioners, William Albertson and Roscoe Quincy Proctor, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above case.

Opinion Below

The opinion of the Court of Appeals (R. 62-74; Appendix A, *infra*) has not yet been reported.

Jurisdiction

The judgment below (R. 75; Appendix B, *infra*) is dated and was entered on April 23, 1964. The jurisdiction of this Court is conferred by section 14(a) of the Subversive Activities Control Act (herein called the Act), 64 Stat. 1001, 50 U. S. C. 793, and 28 U. S. C. 1254.

Questions Presented

The judgment below affirmed orders of the Subversive Activities Control Board (herein called the Board) requiring petitioners to register themselves with the Attorney General pursuant to section 8 of the Act as members of "the Communist Party of the United States of America, a Communist-action organization." The questions presented are:

1. Whether the Court of Appeals was required to adjudicate petitioners' claims of privilege under the Fifth Amendment against being compelled to register themselves pursuant to section 8 of the Act.

2. Whether the member registration provisions of the Act and the Board's registration orders violate petitioners' privilege against self-incrimination.

3. Whether the member registration provisions of the Act, on their face and as applied, violate due process and the First Amendment because they serve no governmental purpose while compelling self-defamation and invading freedom of belief, conscience and association.

4. Whether the member registration provisions of the Act, on their face and as applied, violate due process and the prohibition against bills of attainder because the Board's 1953 determination that the Communist Party was a Communist-action organization is made conclusive on petitioners as to the present character of the Communist Party.

5. Whether the member registration provisions of the Act unconstitutionally deny petitioners the safeguards of judicial trial, trial by jury and grand jury indictment by making the Board's determinations of petitioners' membership in the Communist Party and of the character of the Communist Party conclusive in prosecutions of petitioners for non-compliance with the Board's registration orders.

Statute and Regulations Involved

The pertinent provisions of the Subversive Activities Control Act and the regulations and registration forms prescribed by the Attorney General are set forth in Appendix C, *infra*.

Statement of the Case

This case brings to the Court for the first time the constitutionality of the member registration provisions of the Act.

Sections 7 and 13 of the Act authorize proceedings before the Board, on petition of the Attorney General, for an order requiring an organization to register with the Attorney General as a Communist-action organization and to file a registration statement containing detailed information, including a list of its members. Section 8 provides that if an organization fails to register in obedience to such an order within thirty days after it becomes final,¹ each member of the organization shall register himself as such with the Attorney General.

A member of the organization who fails to register incurs no penalty at this point. Section 13, however, authorizes the Attorney General to petition the Board to find that an accused individual is a member of the organization and to order him to register as such under section 8. An individual who fails to register in compliance with a final order of the Board that he do so is punishable by imprisonment for five years and a fine of \$10,000, both cumulative for each day that the failure continues (sec. 15(a)).

The registration of an individual must be accompanied by a registration statement containing information pre-

¹ Orders of the Board become final upon exhaustion of judicial review (sec. 14(c)).

scribed by the Attorney General (sec. 8(c)). Failure to file this statement is punishable by imprisonment for five years and a \$10,000 fine (sec. 15(a)).

Regulations of the Attorney General provide that the registration of an individual shall be accomplished by the filing of a form (Form IS-52a) which consists solely of a statement to be signed by the registrant that he "hereby registers as a member of _____, a Communist-action organization." The registration statement prescribed by the regulations consists of a separate form (Form IS-52). It calls for the registrant's name, all other names used by him during the past ten years, the date and place of his birth, the name of the Communist-action organization of which he is a member, and a list and description of the duties of all offices held by him in the organization during the preceding year. See Appendix C, *infra*.

On May 31, 1962, the Attorney General instituted separate proceedings before the Board for orders requiring petitioners to register as members of the Communist Party. The Attorney General alleged that the Communist Party had not complied with a final order that it register as a Communist-action organization, that petitioners were members of the Party, and that they had not registered as such. (R. 2, 30.)

Each petitioner filed an answer, which he signed and swore to, alleging that sections 8 and 13 of the Act, on their face and as applied, violated his privilege against self-incrimination, which he thereby asserted. The answers denied that the Communist Party is a Communist-action organization and declined, in reliance on petitioners' constitutional privilege, to answer the allegations of the petition that they were members of the Communist Party. (R. 5, 33.)

It was stipulated at the hearings that the Communist Party had not registered as a Communist-action organization, and that petitioners had not registered as members (R.

16, 43). The Attorney General's evidence consisted of the testimony of paid informers that petitioners had attended meetings of the Communist Party and had been elected to Party offices (R. 10-11, 16-24, 37-38, 44-49). Petitioners offered no evidence.

The Board issued reports and orders finding each petitioner to be, and ordering him to register as, "a member of the Communist Party of the United States of America, a Communist-action organization" (R. 25-26, 57-58).

In their petitions for review by the court below, each petitioner again claimed his privilege against self-incrimination (R. 28, 60).²

The court below affirmed the Board's orders, holding (Appendix A, *infra*) that adjudication of the privilege issue must await prosecution of petitioners for non-compliance with the registration orders, and that consideration of the remaining issues was either likewise premature or foreclosed by *Communist Party v. S.A.C.B.*, 367 U. S. 1 (herein called the *Communist Party* case).

Reasons for Allowing the Writ

This is the first case under the member registration provisions of the Act to reach the courts. By agreement with the government, it is the test case of the constitutionality of these provisions. Registration orders like the two involved here have been issued against 26 other persons, each of whom has claimed his privilege against self-incrimination in the same manner as petitioners. Petitions to review these orders have been filed in the court below, and the cases are being held on stipulations that they will abide the result in this case and will be disposed of in accordance with the judgment that is ultimately entered herein. Eight addi-

² In the court below, petitioners confined their briefs and argument to the constitutional issues.

tional member registration cases are pending before the Board, and if the decision below is allowed to stand, many more such proceedings will be instituted.

The constitutional questions raised by the member registration provisions are substantial, and contrary to the court below, none of them has been settled by the *Communist Party* decision. If the provisions are valid, they put the executive branch into the odious business of hunting down political dissenters and compelling them to defame and incriminate themselves.

The court below affirmed the registration orders without deciding fundamental constitutional issues. Thus it ruled that adjudication of petitioners' claims of the privilege against self-incrimination must await their prosecution for failure to register (Appendix A, *infra*, pp. 26-27).³ Again, the court refused to decide whether the member registration requirement serves any legislative purpose because of "the absence of more comprehensive interpretation of the Act" than this Court gave in the *Communist Party* case (*id.*, p. 29). Thus the decision below requires petitioners, and all other persons ordered to register, to risk the enormous cumulative penalties of section 15(a)—in effect, life imprisonment—in order to secure an adjudication of their constitutional rights. This unconscionable result is incompatible with a fair and responsible administration of justice. Moreover, it is based on a misreading of the *Communist Party* case and is in conflict with other decisions of the Court.

³ Similarly dismissed as premature was petitioners' contention that the Act unconstitutionally denies them a judicial and jury trial (Appendix A, *infra*, p. 27, n. 6).

1. The privilege against self-incrimination.

a. The government's brief in the court below stated (p. 15, n. 9): "We do not take issue with petitioners' argument . . . that the privilege issue is not premature in this proceeding." This concession, not mentioned in the opinion below, was required by the logic of the *Communist Party* case as well as by a proper regard for the constitutional rights of litigants.

A bare majority in the *Communist Party* case (at 106-10) held it premature, on review of the registration order against the Party, to decide whether the Act and the order violated the privilege of the Party's officers who were obliged to execute the registration documents.⁴ The ground for this conclusion was that no claim of privilege had as yet been made by the officers or ruled on by the Attorney General. The Court stated, at 107:

"We cannot, on the basis of supposition that privilege will be claimed and not honored, proceed now to adjudicate the constitutionality under the Fifth Amendment of the registration provisions."

Contrary to the situation in the *Communist Party* case, adjudication of the privilege issue in this proceeding involves no "supposition." Here, each petitioner personally claimed his privilege against being compelled to register in his signed answer to the Attorney General's petition (R. 5-6, 33-34). The Attorney General rejected petitioners' claims by continuing to prosecute the proceedings, and the Board rejected them by issuing the registration orders. Petitioners' claims of the privilege were reiterated in their petitions for review by the court below (R. 28, 60), and were again rejected by the Board and its attorney, the Attorney General, not as inadequate or premature but on

⁴ The dissenting Justices believed (at 175-202) that the issue was not premature and that the registration order was invalid because it violated the privilege of the Party's officers.

the ground that the claims lacked constitutional merit. See Brief for Respondent in the court below, pp. 13-20.

The court below was plainly wrong in stating that "these circumstances were, of course, all present in the record before the Supreme Court in the *Communist Party* review proceeding" (Appendix A, *infra*, p 26). On the contrary, it was the absence from the record in that case of any claim of privilege by the Party's officers that was the controlling circumstance in the Court's ruling on prematurity.

Since petitioners have claimed the privilege, to postpone an adjudication of their claims until they are prosecuted for non-compliance with the registration orders would deny them the full protection of the Fifth Amendment. The Amendment prohibits *compelling* a person to incriminate himself. Affirmance of the registration orders and the threat of daily cumulative criminal penalties for disobedience obviously exert compulsion upon petitioners to register. If their claims of privilege are valid, the Amendment entitles them to protection against such compulsion. The protection can be given only by adjudicating their claims in this proceeding.

Finally, in the *Communist Party* case, the privilege was asserted for persons who were not parties to the litigation. Here, in contrast, it is the litigants themselves who have claimed the privilege and, following rejection of their claims by the Attorney General and the Board, demand an adjudication. To withhold adjudication in these circumstances serves no purpose other than to pressure petitioners to surrender their constitutional protection. Such a course also violates the principle that where disobedience of an administrative order is punishable by severe cumulative criminal penalties, due process requires that a civil remedy be available to test the validity of the order. *Ex Parte Young*, 209 U. S. 123; *Oklahoma Operating Co. v. Love*, 252 U. S. 317. Cf. *Reisman v. Caplin*, 375

U. S. 440, 446-49. Accordingly, the court below was wrong in stating (Appendix A, *infra*, p. 27) that the criminal prosecutions of petitioners for violating the registrations orders "will provide an adequate forum for litigation of [the privilege] issues." On the contrary, it is only in these proceedings to review the Board's registration orders that petitioners can enjoy the remedy to which *Ex Parte Young* entitles them.

b. The question whether the Act and the orders of the Board violate petitioners' privilege against self-incrimination is, to say the least, a substantial one, as the court below recognized. See Appendix A, *infra*, p. 24.

The orders require petitioners to sign and file registration documents (*supra*, p. 4) in which they must state that they are members of the Communist Party at the time they register, admit that the Party is a Communist-action organization, list the offices that they hold in the organization, and disclose other incriminating information. Such disclosure cannot be compelled against a claim of privilege. *Blau v. United States*, 340 U. S. 159; *Quinn v. United States*, 349 U. S. 155; *Scales v. United States*, 367 U. S. 203; *Communist Party v. United States*, 331 F. 2d 807, cert. den. June 8, 1964, *sub nom.*, *United States v. Communist Party*.

Congress recognized that self-incrimination was inherent in the registration features of the Act and sought to avoid it by the inclusion of section 4(f).⁵ That section, however, merely excludes the use of the fact of a registrant's registration as evidence against him of his membership or officership, in the Communist Party. It does not give a registrant immunity from prosecution on account of membership or officership. Hence it is not an adequate substitute for, and therefore cannot displace, the privilege. *Counselman v. Hitchcock*, 142 U. S. 547; *United States v.*

⁵ The legislative history of the section is reviewed in *Scales v. United States*, *supra*, at 212-19, and 279-86 (dissenting opinion).

Bryan, 339 U. S. 323, 336; *Scales v. United States*, *supra*, at 206-219; *Communist Party v. United States*, *supra*, at 813, n. 10.⁶

Section 4(f) has the additional inadequacy that it does not accord protection against all evidentiary uses of the incriminating admissions required by a registration order. First, while the section bars the receipt in evidence of the registration documents for the purpose of proving a registrant's Communist Party membership or officership, it does not preclude their receipt to prove other incriminating admissions in the documents, including the admission that the organization to which the registrant belongs is a Communist-action organization.⁷ Second, the bar of the section applies only "in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute." Thus the section does not apply in prosecutions for violating provisions of the Act other than section 4(a) and (c). Hence, it does not preclude introduction of the registration documents to prove the registrant's Communist Party membership in a prosecution for violating the employment or labelling provisions of sections 5 and 10.

2. Substantive due process.

A law which compels compliance with exactions having no governmental purpose is an arbitrary and unreasonable exertion of governmental power, prohibited by due process.

⁶ Nothing in *Murphy v. Waterfront Commission*, — U. S. —, June 15, 1964, alters the *Counselman* rule where, as here, the claim of the privilege is addressed to a federal authority and is based on incrimination under federal law. Moreover, section 4(f) does not bar use of the fruits of the incriminating admissions.

⁷ By definition, a Communist-action organization is a seditious, foreign-controlled association. Act, secs. 3(3) and 2; *Communist Party* case at 55-56, 88-89. An admission that the organization is of such a character is obviously incriminating under both section 4(a) of the Act and the Smith Act.

See *Nebbia v. New York*, 291 U. S. 502, 525; *Perez v. Brownell*, 356 U. S. 44, 58. This principle condemns the member registration requirements of the Act.

The *Communist Party* case, at 88-105, sustained the constitutionality of section 7(d) of the Act, requiring a Communist-action organization to furnish the names of its members to the Attorney General, on the ground that the government has a security interest in disclosure of the identity of the members of such an organization. There can be no such justification for the Act's provisions for registration by the members themselves. Identification of the person as a member and disclosure of his membership is accomplished by the Board's findings, which are prerequisite to the issuance of a registration order. Sec. 13(g)(2). Compulsory self-identification of a member by registration thereafter is thus entirely superfluous to any disclosure objective. Nor does such self-identification serve any other legitimate purpose.

The court below did not find that the registration of a person as a member of a Communist-action organization in obedience to a Board order serves any function not already accomplished by the Board's finding, that he is a member. Instead, it held (Appendix A, *infra*, p. 29) that "in the absence of more comprehensive interpretation of the Act, particularly regarding the sanctions," than this Court gave in the *Communist Party* case, "we do not know whether an additional function is performed."

The court did not explain, and it is impossible to understand, why an interpretation of the Act's sanctions⁸ is necessary before deciding whether a person's self-identification as a member serves some governmental purpose not performed by the Board's finding that he is a member.

⁸ The court used the term "sanctions" to refer to the provisions of the Act imposing civil disabilities, such as the denial of passports and certain types of employment, upon members of organizations ordered to register.

But if such an interpretation were a prerequisite to adjudication of the due process question which this case presents, then it was up to the court below to do the interpreting, instead of abdicating its judicial function. In any event, the "interpretation" that the court below said was needed has now been supplied. The invalidation of section 6 of the Act by *Aptheker v. Secretary of State*, — U. S. —, June 22, 1964, puts an end to the court's speculation that an interpretation of the sanctions might reveal some hidden function for the member registration requirement.

3. The First Amendment.

The due process defect of the Act, arising from its exaction of conduct which serves no governmental purpose, is compounded by the fact that the conduct exacted is speech. Moreover, the speech is in the form of a declaration contrary to the conscience and belief of the declarant. For these reasons, the Act and the Board's orders violate the First Amendment as well as due process.

The freedom of speech protected by the Amendment embraces not merely freedom to say what is on one's mind, but also freedom to refrain from voicing a text dictated by the government. *W. Va. Bd. of Ed. v. Barnette*, 319 U. S. 624. If the registration orders exacted only the most innocuous of declarations, they would still violate the First Amendment. Under either the clear and present danger test or the balancing test, there must, at a minimum, be some valid reason for a governmental order that a person say what it prescribes or lose his liberty. "No one would deny that the infringement of constitutional rights of individuals would violate the guarantee of due process where no state interest underlies the state action." *Sweezy v. New Hampshire*, 354 U. S. 234, 254.

The declaration exacted by the registration orders is far from innocuous. It is a coerced admission of political af-

filiation, historically a tool of oppression. By making the admission, the registrant bows to the proposition that government has the right, as an end in itself, to inquire into, determine, and compel the avowal of, political affiliations. Furthermore, because it is compelled on the basis of governmental findings that the Communist Party is a criminal conspiracy, registration is a statement of acquiescence in the findings and is self-defamatory. Indeed, the registration documents prescribed by the Attorney General require registrants to state in so many words that the Communist Party is a Communist-action organization, thereby making explicit what is implicit in the act of registering. (See secs. 11.206 and 11.207 of the Attorney General's regulations and forms IS-52a and IS-52, Appendix C, *infra*.)

Thus the member registration requirements compel persons to signify submission to the government's orthodoxy concerning the nature of Communism and the Communist Party, to forswear themselves by certifying as true what they believe to be false, and to defame themselves by acknowledging membership in a seditious conspiracy. Because of the First Amendment, however, the government may not "compel affirmation of a repugnant belief." *Sherbert v. Verner*, 374 U. S. 398, 402; *Torcaso v. Watkins*, 367 U. S. 488, 495. Nor may a person be required to affirm the correctness of an administrative or judicial finding against himself. *Art Metals Construction Co. v. N.L.R.B.*, 110 F. 2d 148; *Hartsell Mills Co. v. N.L.R.B.*, 111 F. 2d 291; *Kansas City P. & L. Co. v. N.L.R.B.*, 111 F. 2d 340; *Swift & Co. v. N.L.R.B.*, 106 F. 2d 87; *N.L.R.B. v. Louisville Refining Co.*, 102 F. 2d 678.

The member registration requirements violate the First Amendment for an additional reason. To compel members of the Communist Party publicly to register as such obviously restrains their association in the organization. Restraints on membership in the Communist Party may "not cut deeper into the freedom of association than is necessary to deal with 'the substantive evils that Congress

has a right to prevent.' " *Scales v. United States*, 367 U. S. 203, 229; *Aptheker v. Secretary of State*, *supra*. As we have seen, the requirement of self registration has no relation to any substantive evil within the competence of Congress. Moreover, the requirement applies to persons whose participation in the Communist Party is wholly innocent and limited to constitutionally protected conduct. Hence the requirement is condemned by the First Amendment. Cf. *Brown v. United States*, — F. 2d —, C. A. 9, June 19, 1964.

There is no substance to the view of the court below (Appendix A, *infra*, pp. 29-30) that the *Communist Party* decision forecloses the First Amendment objections to the member registration provisions of the Act. What that case decided (at 88-105) was that the interest of the members of a Communist-action organization in the anonymity of their political association was outweighed "in the constitutional balance" by the government's interest in the disclosure of their identity. We think that this holding should be re-examined and overruled, but it does not govern the present case. Here, any governmental interest in disclosure of the names of Communist Party members is fully satisfied by the findings of the Board. Self-identification as a member by registration is therefore unnecessary for disclosure and has no rational relation to any other governmental interest. Since the court below found nothing, and there is nothing, to put in the balance on the side of the registration requirement, the orders of the Board cannot survive the balancing test applied in the *Communist Party* case, much less the clear and present danger test.

4. Procedural due process and attainder.

The Attorney General introduced no evidence at the administrative hearing to support the allegation of his petitions (R. 3, 31), denied in petitioners' answers (R. 5, 33), that the Communist Party is a Communist-action organiza-

tion. Instead, he relied upon, and the Board held that petitioners were bound by, the Board's 1953 determination in the registration proceeding against the Party (R. 13-14, 41-42, 53-54).

Thus, in 1962, petitioners were ordered to register on the basis of a determination as to the character of the Communist Party made nine years earlier in a proceeding to which they were not parties. This procedure, though undoubtedly required by the Act, violates the due process principle that liability may not be imposed on a person without affording him a hearing at which he may contest the factual issues on which the liability depends. *Noto v. United States*, 367 U. S. 290, 299; *Renaud v. Abbott*, 116 U. S. 277, 288. Cf. *Kirby v. United States*, 174 U. S. 47.

The constitutionality of the Board's registration orders against petitioners depends on the truth of the premise that the Communist Party was a Communist-action organization at the time the administrative hearings were held and the orders were issued. Accordingly, even if it could be said that because petitioners were found to be members of the Communist Party they are bound by the 1953 determination, they would still be entitled to a hearing on the *present* character of the organization. This is denied them by the Act. While section 13(b) and (i) permits an organization which has registered as a Communist organization to secure a redetermination of its status by showing that it no longer has the characteristics attributed to it by the Board, neither the members of the organization nor an unregistered organization⁹ or its members may seek such redetermination.

The Act therefore violates the principle that "the constitutionality of a statute predicated on the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." *United*

⁹ The Communist Party has not registered, and the enforcement proceeding against it is still in litigation. See *Communist Party v. United States*, *supra*.

States v. Carolene Products Co., 304 U. S. 144, 153; *Chastleton Corporation v. Sinclair*, 264 U. S. 543; *Baker v. Carr*, 369 U. S. 186, 214. This rule is peculiarly pertinent since, as the Chief Justice observed in his dissent in the *Communist Party* case (p. 134, n. 11), the Board's 1953 finding was itself based on a presumption of continuity which "is certainly dubious" as applied to "stale evidence" of Party activity prior to 1940.

Accordingly, the member registration requirements of the Act as here applied do *not*, in the words of the *Communist Party* decision (at 87), "arise only because of, and endure so long as, an organization presently conducts operations of the described character." On the contrary, the requirements attach "to the past and ineradicable actions of an organization" (*ibid.*). For that reason, the orders of the Board not only deny procedural due process but constitute bills of attainder.¹⁰

The court below dismissed these contentions by stating (Appendix A, *infra*, p. 31): "In the absence of any showing that circumstances have changed significantly since the Board's determination of the Party's status in 1953, we do not find it necessary to reexamine the issue here." This begs the question, since the Act and the ruling of the Board (R. 13-14) precluded petitioners from making any such showing.¹¹

¹⁰ The Board's orders attain petitioners for the additional reason that the administrative determination on which petitioners' liability to register depends, that the Communist Party is a Communist-action organization, is a condemnation of that organization as a criminal enterprise. Such a condemnation, made without a judicial trial and not subject to reconsideration in a judicial trial, constitutes a bill of attainder. See Note, 72 Yale L. Jour. 330.

¹¹ One changed circumstance is recognition of the fact that the basic premise of the Act and the Board's 1953 findings—that the world Communist movement is a monolithic, Soviet-directed conspiracy to destroy all free governments—is what Senator Fulbright calls "the master myth of the cold war." See 110 Cong. Rec. 6029 (daily pagination).

5. The denial of a trial by jury and judicial trial.

The Act (secs. 8, 15) makes the Board's 1953 finding that the Communist Party was a Communist-action organization and its 1962 findings that petitioners were members of the Party conclusive in criminal prosecutions of petitioners for non-compliance with final Board orders requiring them to register. Thus the Act subjects petitioners to criminal liability for failing to register as members of a Communist-action organization on the basis of an administrative determination of two of the three elements of the offense. In this respect, the Act and the Board's orders deny petitioners the constitutional safeguards of indictment by grand jury, judicial trial and trial by jury in violation of the Fifth and Sixth Amendments, Art. III, sec. 2, cl. 3, Art. III, sec. 1, and Art. I, sec. 9, cl. 3. *United States v. Spector*, 343 U. S. 169, 174 *et seq.* (dissenting opinion);¹² *Wong Wing v. United States*, 163 U. S. 228; *Fraenkel, Can the Administrative Process Evade the Sixth Amendment?*, 1 Syracuse L. Rev. 173. Cf. *Kennedy v. Mendoza-Martinez*, 372 U. S. 144, 165-67. The Act's denial of these safeguards is the more egregious because the sole constitutional justification for the registration requirements is that they apply only to organizations having the characteristics of a Communist-action organization and to members of such organizations. See *Communist Party* case, at 88-92.

The court below held (Appendix A, *infra*, p. 27, n. 6) that this objection was premature and would be ripe for consideration only when petitioners are prosecuted for non-compliance with the Board's orders. But under *Ex Parte Young*, *supra*, petitioners are entitled to an adjudication of their constitutional contentions in a civil proceeding before incurring the Act's enormous cumulative penalties for

¹² The majority refused to consider this question because it had not been presented.

violating the registration orders. Since the present proceeding provides the only opportunity for such adjudication, petitioners' constitutional attack is not premature. See *supra*, pp. 8-9.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN J. ABT,
299 Broadway,
New York 7, N. Y.,

JOSEPH FORER,
711 14th Street, N. W.,
Washington 5, D. C.,

Attorneys for Petitioners.

Appendix A—Opinion Below

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 17,492

WILLIAM ALBERTSON,

Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent.

No. 17,623

ROSCOE QUINCY PROCTOR,

Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent.

ON PETITIONS FOR REVIEW OF ORDERS OF THE
SUBVERSIVE ACTIVITIES CONTROL BOARD

Decided April 23, 1964

MESSRS. JOHN J. ABT, of the bar of the Court of Appeals
of New York, *pro hac vice*, by special leave of court, and
JOSEPH FORER, for petitioners.

Appendix A—Opinion Below

MR. KEVIN T. MARONEY, Attorney, Department of Justice, with whom ASSISTANT ATTORNEY GENERAL J. WALTER YEAGLEY, MESSRS. FRANK R. HUNTER, JR., General Counsel, Subversive Activities Control Board, and GEORGE B. SEARLS and MRS. LEE B. ANDERSON, Attorneys, Department of Justice, were on the brief, for respondent. MR. PETER PAUL HANAGAN, Attorney, Subversive Activities Control Board, also entered an appearance for respondent.

MR. LEONARD B. BOUDIN filed a brief in No. 17,623 on behalf of National Lawyers Guild, as *amicus curiae*, urging reversal.

Before BAZELON, *Chief Judge*, and BASTIAN and McGOWAN, *Circuit Judges*.

McGOWAN, *Circuit Judge*: These are proceedings for review, pursuant to § 14a of the Subversive Activities Control Act (50 U. S. C. § 781 *et seq.*), of two separate orders of the Subversive Activities Control Board requiring petitioners, Albertson and Proctor, to register under Section 8 of the Act as members of "the Communist Party of the United States of America, a Communist-action organization." Petitioners do not claim any deviation by the Board from the prescribed statutory procedure; nor do they assert that the orders are not supported by adequate evidence. Rather, they attack the orders on the ground that the underlying statutory provisions are, for various reasons, unconstitutional.

These claims of constitutional infirmity fall into two groups. The first is compounded of arguments which import that the orders are invalid because of certain consequences which might flow from failure to comply with

Appendix A—Opinion Below

them. We do not consider these questions ripe, as yet, for judicial consideration. The second group is addressed to the proposition that the bare existence of orders, without more, impairs petitioners' constitutional rights. As to these grounds, we affirm the Board's action.

I

The scheme of the statute involved in these cases is that, if a Communist-action organization fails to register as required by an order of the Board (issued pursuant to Sections 7 and 13 of the Act) and thereby fails to disclose its membership, the members individually may be compelled to register as such.¹ This individual obligation attaches only after default by the organization and only after the fact of membership has been found to exist in a proceeding before the Board initiated by the Attorney General against a particular person.² Registra-

¹ Section 8 of the Act provides:

(a) Any individual who is or becomes a member of any organization concerning which (1) there is in effect a final order of the Board requiring such organization to register under section 7(a) of this title as a Communist-action organization, (2) more than thirty days have elapsed since such order has become final, and (3) such organization is not registered under section 7 of this title as a Communist-action organization, shall within sixty days after said order has become final, or within thirty days after becoming a member of such organization, whichever is later, register with the Attorney General as a member of such organization.

² Section 13 of the Act provides:

(a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under

Appendix A—Opinion Below

tion itself consists of filing a signed registration form identifying oneself as a member of the organization and giving one's address.³ The statute also provides that this act of registration is to be accompanied by the filing of a separate registration statement containing such information as the Attorney General may, by regulation, prescribe.⁴ Pursuant to this grant of authority, the Attorney General has called for such additional information as date and place of birth, *aliases* used during the past ten years, and all offices held in the organization presently or during the preceding twelve months, together with a de-

such section, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

* * *

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

* * *

(2) that an individual is a member of a Communist-action organization (including an organization required by final order of the Board to register under section 7(a) of this title, [sic] it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such individual an order requiring him to register as such under section 8 of this title.

³ Form IS-52a, Budget Bureau No. 43-R414 (Ed. 9-6-61).

⁴ Section 8(c) of the Act provides:

The registration made by any individual under subsections (a) or (b) of this section shall be accompanied by a registration statement to be prepared and filed in such manner and form, and containing such information, as the Attorney General shall by regulations prescribe.

Appendix A—Opinion Below

scription of the duties performed during any such tenures of office.⁵ Failure by an individual to comply with a Board order requiring him to register is punishable by a fine of not more than \$10,000, or imprisonment for not more than five years, or both, with each day of non-compliance constituting a separate offense. These penalties follow upon conviction pursuant to the usual criminal processes established independently of the Act.

These proceedings were initiated by the Attorney General's representations to the Board that petitioners were members of the Communist Party of the United States; that that organization had theretofore been found by the Board to be a "Communist-action organization" and ordered to register under Section 7 of the Act; that such organization had not registered; and that, accordingly, the Board should order petitioners to register under Section 8. The answers filed by petitioners denied that the Communist Party was a "Communist-action organization"; refused, by reason of a claim of privilege against self-incrimination, to answer the allegations of petitioners' membership in the Party; and asserted the invalidity of Sections 8 and 13 of the Act on various constitutional grounds. After separate hearings at which the Attorney General adduced evidence and petitioners did not, the orders under review were issued.

II

Petitioners press strongly the contention that the membership registration provisions of the Act collide directly with their Fifth Amendment immunity against self-incrimination; and that, because of this conflict, the Board's orders should now be declared invalid. Congress has, they say, so legislated with respect to the Communist Party that membership therein has taken on direct and

⁵ Form IS-52, Budget Bureau No. 43-R301.2.

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serious criminal connotations, creating dangers of such a nature as to relieve against any duty, however imposed, of self-revelation. The argument, in substance, is that there is no room within the Fifth Amendment for the simultaneous operation of the contrasting legislative approaches of prohibition on pain of criminal punishment, on the one hand, and regulation through the publicity of compelled disclosure, on the other.

That the point is not without force is evident from the recent decision of this court in *Communist Party v. United States*, — U. S. App. D. C. —, — F. 2d — (No. 17,583, decided Dec. 17, 1963). That was an appeal by the Communist Party of the United States from its conviction by a jury on an indictment for failing to register as a Communist-action organization, as required by a Board order issued pursuant to Sections 7 and 15 of the Act. We reversed and remanded for a new trial on the ground that, since the registration requirements involved action on behalf of the organization by an officer or authorized individual who would thereby identify himself with the Party, the self-incrimination shield of the Fifth Amendment placed the prosecution in a criminal trial under the necessity of proving, as an essential element of the crime charged, the availability to the defendant organization of an individual willing to effect the registration and to assume the concomitant risk of criminal exposure. There having been a deficiency of proof in this respect, we set aside the Party's conviction but afforded the Government an opportunity to supply such proof in a new trial.

That case, however, presented us with an appeal from a criminal conviction for refusing to comply with a Board order, and not with a statutory review of the order itself. The latter proceeding, indeed, had already taken place, culminating in the Supreme Court's decision in *Communist Party v. Subversive Activities Control Board*, 367

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U. S. 1 (1961), upholding the Board's order which found the Communist Party to be a "Communist-action organization" and which required it to register as such. In that review proceeding, the Party advanced many contentions with respect to the invalidity of the order and of the Act under which it was issued. Many of these were founded in the Constitution. None prevailed, and most were disposed of on the merits. A conspicuous exception in this latter respect was the self-incrimination attack upon the requirement that the Party register.

The Supreme Court explicitly refrained from passing upon the merits of this challenge because it was premature. *Communist Party v. SACB*, 367 U. S. 1, 105-110 (1961). The Court pointed out that there were certain contingencies standing between the bare issuance of the order requiring registration and its enforcement as against a claim of the privilege. One was whether the privilege would in fact be claimed, and another was whether, if claimed, it would be honored. Over and above these matters, however, the Court also noted that any disallowance of a claim of the privilege in the context of this Act is likely to raise complex and difficult legal issues which can best be dealt with in the precise factual setting in which they finally arise. Questions of this nature, said the Court, are "questions which should not be discussed in advance of the necessity of deciding them"; and it went on to say that the point when that necessity exists, if ever, is "when enforcement proceedings for failure to register are instituted against the Party or against its officers."

We think the same reasoning extends to the registration requirements applicable to members of the Party. It is pressed upon us that, unlike the situation as it was before the Supreme Court, here the privilege has been claimed and denied. But the facts relied upon in support of this contention are, in respect of the claim, that the privilege was advanced in petitioners' answers to the At-

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torney General's petition to the Board initiating these proceedings; and that it was asserted again in the petition for review in this court. With respect to denial, this is said to reside in the action of the Attorney General in continuing the proceedings before the Board in the face of the answers, the action of the Board in issuing the orders, and the action of the Attorney General, as the Board's lawyer, in defending the orders before this court.

But these circumstances were, of course, all present in the record before the Supreme Court in the *Communist Party* review proceeding, and do not, in and of themselves, offer any basis for differentiating this case from that in terms of prematurity. What is new since the earlier decision is the fact that the Attorney General did receive and reject a claim of privilege anonymously tendered on behalf of officers of the Party, and did move to have the Party indicted, tried and convicted in criminal proceedings for failure to comply with the registration order. It could presumably be urged upon us, although petitioners appear not to have done so in their papers, that this demonstrates beyond peradventure that any claim of privilege by petitioners as a justification for not registering will inexorably be followed by criminal prosecution, and that this court, anticipating that certainty, should go ahead now and decide the issues relating to the privilege.

It is to be remembered, however, that the criminal prosecution of the Party has thus far resulted in a judicial determination that the registration requirement of the Act, at least in the case of the Party and its officers, presents major problems in respect of the Fifth Amendment privilege. It seems unlikely that these problems are without parallel in the case of mere members of the Party. In any event, it is by no means clear as of this moment, any more than it was at the time of the Supreme Court decision, that affirmance of the orders before us will inevitably result in the invocation of criminal processes *vis-a-vis* the peti-

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tioners for failure to register pursuant to a claim of Fifth Amendment immunity. If denial of that claim in the future is pressed to the point of criminal prosecution, it remains true that, insofar as the protective reach of the Fifth Amendment is concerned, that proceeding "will provide an adequate forum for litigation of that issue." *Communist Party v. SACB*, 367 U. S. at 107. Apart from the natural apprehensions of petitioners with respect to the burdens of criminal prosecution, we believe it to be a better forum in the sense that legal issues can be resolved in the light of the peculiar factual setting in which they arise. Be this as it may, however, it is a forum which may never be reached, and we see no reason to anticipate decisions which may never have to be made.

Nor can we at this stage vacate the order on the ground that the statute is unconstitutional because it compels the production of potentially incriminating information while allowing "the exercise of the Fifth Amendment privilege only under circumstances which effectively nullify the Amendment's protection." *Communist Party v. SACB*, 367 U. S. at 109. See *Boyd v. United States*, 116 U. S. 616 (1886). Compare *Communist Party v. SACB*, 96 U. S. App. D. C. 66, 115-16, 223 F. 2d 531, 580-81 (1954) (BAZELON, J., dissenting). Whether the Subversive Activities Control Act is such a statute may not be determined, as the Supreme Court said in 1961, until the question is raised in a criminal prosecution.*

* Two other contentions made by petitioners fall within the sweep of what we have said hereinabove about ripeness. One is that the Act deprives petitioners of their right to a jury trial. This rests upon a reading of the statute as making the administrative determination of the status of the Communist Party binding upon petitioners in a criminal prosecution for non-compliance with the Board's orders. This is, obviously, a question of statutory construction, with constitutional implications, to be raised and decided when, and if, a criminal trial occurs.

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III

We turn now to those issues which are presently ripe for review. The same arguments here advanced were, for the most part, raised in respect of the registration order directed to the Communist Party, and were rejected in the 1961 opinion of the Supreme Court. Though different considerations may perhaps arise when, as here, the contentions are made on behalf of individuals, as distinct from the organization of which they are members, we nevertheless consider that case to be largely determinative of the remaining issues urged upon us in this proceeding.

1. The petitioners first contend that the registration provisions violate the Due Process Clause "because they exact admissions which serve no governmental purpose." The Supreme Court, in the 1961 case, held that the Government had a legitimate interest in discovering and disclosing the identity of members of the Communist Party. That conclusion obtains here as well. Section 8 operates only if the Party has not yet registered under Section 7. It is, thus, an alternative method of achieving the Gov-

The second derives from the challenge made to the grant of authority, in Section 8(c) of the Act, to the Attorney General to formulate, by regulation, the information to be supplied as an incident to registration. This authority is said to be so broad in scope and so lacking in standards for its exercise as to encounter sundry insurmountable constitutional obstacles. There is no showing that the regulations which the Attorney General has promulgated exceed the bounds of Congress' likely intentions. Compare the provisions of § 7(d) of the Act (prescribing the information to be contained in registration statements filed by Communist-action and Communist-front organizations). Until there is such a showing, the propriety of the Attorney General's actions and the conditions under which Congress has permitted him to act can best be inquired into judicially in a specific criminal prosecution, if any is ever initiated—a setting of greater factual concreteness.

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ernment's aim. Petitioners attempt to distinguish Section 8 from Section 7 on the ground that, since an administrative finding of the individual's membership is a prerequisite to the orders issuing under Section 13(g)(2), the registration requirement serves no additional disclosure function. The short answer is that, in the absence of more comprehensive interpretation of the Act, particularly regarding the sanctions, we do not know whether an additional function is performed.

We are dealing with an unusual statute. Congress conceived the Subversive Activities Control Act as a comprehensive regulatory scheme, comprising Board proceedings leading to registration orders, restrictions imposed on all those who were the subjects of registration orders, and penalties levied on those who disobeyed the orders. The Supreme Court, in the 1961 opinion, refused to consider the legal consequences arising out of the sanctioning provisions, but affirmed the issuance of registration orders as a means reasonably related to the achievement of a goal within the general area of Congress' competence to legislate. Since the order here appears to be reasonably related to Congress' general objective, and, since there has been no determination that that goal or the means of achieving it employed in this Act are invalid on other constitutional grounds, we can not now entertain constitutional objection on grounds that there is no independent governmental purpose.

2. Petitioners contend next that the registration provisions violate the First Amendment "because they extort declarations contrary to belief and conscience." This is, in essence, an argument that freedom of speech embraces a right not to identify oneself publicly with a political organization, since any such identification inevitably involves attribution to the individual of what either are, or are asserted to be, the political ideals and objectives of the organization. We believe, however, that the 1961 opinion

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of the Supreme Court settled this question by holding that the menace of the communist conspiracy, as found to exist by the Congress, justified such invasions of private rights. As pointed out in that case, registration requirements are not a new approach to the Government's problem of getting information and, in some cases, making it public. The courts have upheld this general approach, subject, of course, to the scrutiny in each case of the private right in relation to the governmental purpose. See *United States v. Harriss*, 347 U. S. 612 (1954) (upholding the Federal Regulation of Lobbying Act, 2 U. S. C. §§ 261-270); *Burroughs v. United States*, 290 U. S. 534 (1934) (upholding the Federal Corrupt Practices Act, 2 U. S. C. §§ 241-245); *American Communications Assn. v. Douds*, 339 U. S. 382 (1950) (upholding the oath requirements of the Taft-Hartley Act); *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63 (1928); cf. The Foreign Agents Registration Act, 22 U. S. C. §§ 611-621. Compare *N.A.A.C.P. v. Alabama*, 357 U. S. 449 (1958) and *Thomas v. Collins*, 323 U. S. 516 (1945).

3. Petitioners further contend that the registration provisions violate the First Amendment and the Due Process Clause "because they impose unjustifiable restraint on association." That part of the question which is before us now, whether the registration provisions alone place forbidden pressures on the freedom of association, has been answered by the Supreme Court in the negative.⁷

⁷ If the petitioners seek to pose the question "Whether Congress has power to outlaw an association, group or party either on the ground that it advocates a policy of violent overthrow of the existing Government at some time in the future or on the ground that it is ideology subservient to some foreign country," (taken from Justice Black's 1961 dissenting opinion, 367 U. S. at 147) the question is premature, as the 1961 majority opinion makes plain. For, according to that opinion, in the absence of any consideration of the sanctions attaching to a registration order, the statute does not "outlaw an association, group or party" (emphasis added); it is simply a regulatory statute. Thus the majority opinion did not consider the question posed, and we may not consider it until such time as the Act's sanctions are before us.

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4. Finally, it is suggested that the provisions constitute a bill of attainder "because the 1953 determinations as to the character of the Communist Party is made conclusive against petitioners." In the absence of any showing that circumstances have changed significantly since the Board's determination of the Party's status in 1953, we do not find it necessary to reexamine this issue here. See *National Council of American-Soviet Friendship, Inc. v. SACB*, — U. S. App. D. C. —, 322 F. 2d 375, 392 (1963); *Weinstock v. SACB*, — U. S. App. D. C. —, — F. 2d — (No. 13,422, decided Dec. 17, 1963) (concurring opinion); *Flynn v. Rusk*, 219 F. Supp. 709, 713 (D. D. C. 1963) (cert. granted); cf. *Communist Party v. SACB*, 367 U. S. at pp. 82-88; *Jefferson School of Social Science v. SACB*, — U. S. App. D. C. —, — F. 2d — (No. 12,876, decided Dec. 17, 1963). Also see, footnote 6, *supra*.

The orders of the Board in these cases are

Affirmed.

BASTIAN, *Circuit Judge*, concurs in the result.

Appendix B—Judgment Below

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1963.

— o —

No. 17,492

WILLIAM ALBERTSON,

Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent.

— o —
No. 17,623

ROSCOE QUINCY PROCTOR,

Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent.

— o —

**On Petitions for Review of Orders of the Subversive
Activities Control Board.**

Before:

BAZELON, *Chief Judge*, and

BASTIAN and MCGOWAN, *Circuit Judges*.

JUDGMENT

**These cases came on to be heard on the records from
the Subversive Activities Control Board, and were argued
by counsel.**

Appendix B—Judgment Below

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the orders of the Subversive Activities Control Board on review in these cases are hereby affirmed.

Per CIRCUIT JUDGE MCGOWAN.

Dated: Apr. 23, 1964.

Circuit Judge BASTIAN concurs in the result.

Appendix C—Statutes and Regulations Involved

1. Subversive Activities Control Act

The Subversive Activities Control Act of 1950, 64 Stat. 987, 50 U. S. C. 781 ff., as amended, provides in part as follows:

Sec. 4.(a) It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, as defined in paragraph (15) of section 3 of this title, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual: *Provided, however,* That this subsection shall not apply to the proposal of a constitutional amendment.

• • •

(f) Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. The fact of the registration of any person under section 7 or section 8 of this title as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute.

• • •

Sec. 7.(a) Each Communist-action organization (including any organization required, by a final order of the Board, to register as a Communist-action organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form pre-

Appendix C—Statutes and Regulations Involved

scribed by him by regulations, as a Communist-action organization.

* * *

(c) The registration required by subsection (a) or (b) shall be made—

* * *

(3) in the case of an organization which by a final order of the Board is required to register, within thirty days after such order becomes final.

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

* * *

(4) In the case of a Communist-action organization, the name and last known address of each individual who was a member of the organization at any time during the period of twelve full calendar months preceding the filing of such statement.

Sec. 8.(a) Any individual who is or becomes a member of any organization concerning which (1) there is in effect a final order of the Board requiring such organization to register under section 7(a) of this title as a Communist-action organization, (2) more than thirty days have elapsed since such order has become final, and (3) such organization is not registered under section 7 of this title as a Communist-action organization, shall within sixty days after said order has become final, or within thirty days after becoming a member of such organization, whichever is later, register with the Attorney General as a member of such organization.

(b) Each individual who is or becomes a member of any organization which he knows to be registered as a

Appendix C—Statutes and Regulations Involved

Communist-action organization under section 7(a) of this title, but to have failed to include his name upon the list of members thereof filed with the Attorney General, pursuant to the provisions of subsections (d) and (e) of section 7 of this title, shall, within sixty days after he shall have obtained such knowledge, register with the Attorney General as a member of such organization.

(c) The registration made by any individual under subsections (a) or (b) of this section shall be accompanied by a registration statement to be prepared and filed in such manner and form, and containing such information, as the Attorney General shall by regulations prescribe.

• • •

Sec. 13.(a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under such section, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

• • •

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

• • •

(2) that an individual is a member of a Communist-action organization (including an organization

Appendix C—Statutes and Regulations Involved

required by final order of the Board to register under section 7(a)), it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such individual an order requiring him to register as such under section 8 of this title.

* * *

Sec. 14.(a) The party aggrieved by any order entered by the Board under subsections (g), (h), (i), or (j) of section 13, or subsection (f) of section 13A, may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the entire record in the proceeding, including all evidence taken and the report and order of the Board. Thereupon the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board * * * The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of Title 28.

(b) Any order of the Board issued under section 13, or subsection (f) of section 13A, shall become final—

* * *

(4) upon the expiration of ten days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Board be affirmed or the petition for review dismissed.

Sec. 15.(a) If there is in effect with respect to any organization or individual a final order of the Board re-

Appendix C—Statutes and Regulations Involved

quiring registration under section 7 or section 8 of this Title—

• • •

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

2. Regulations of the Attorney General

Order No. 250-61, issued by the Attorney General on October 3, 1961, effective October 7, 1961, prescribing regulations to carry out the provisions of sections 7, 8, 9 and 10 of the Subversive Activities Control Act, 28 C. F. R. Part 11, provides in pertinent part as follows:

Section 11.206 Forms for registration of individuals.

Each individual required to register pursuant to section 8(a) or (b) of the act shall accomplish such registration on a form hereby designated as Form IS-52a. This form is available at the Internal Security Division, Department of Justice, Washington 25, D. C., and may be obtained in person or by mail.

Section 11.207 Form for registration statement of individuals.

Registration statements of individuals shall be prepared and filed in duplicate with the Internal Security Division, Department of Justice, Washington 25, D. C. Filing may

Appendix C—Statutes and Regulations Involved

be made in person or by mail and shall be deemed to have taken place upon receipt thereof. Such registration statement shall be on a form hereby designated as Form IS-52, copies of which are available at the Internal Security Division.

3. Forms Prescribed by the Attorney General

Form IS-52a is as follows:

Form No. IS-52a
(Ed. 9-6-61)

Budget Bureau No. 43-R414
Approval expires July 31, 1966

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

REGISTRATION FORM FOR INDIVIDUALS

Pursuant to Section 8(a) or (b) of
the Internal Security Act of 1950

(NOTE: This form should be accompanied by a
Registration Statement, Form IS-52)

..... hereby
(Name of individual—Print or type)

registers as a member of,
a Communist-action organization.

/s/
(Signature) (Date)

.....
(Typed or printed name) (Date)

.....
(Address—type or print)

Appendix C—Statutes and Regulations Involved

Form IS-52 is as follows:

Budget Bureau No. 43-R301.2
Approval expires July 31, 1966

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

FORM IS-52

for

REGISTRATION STATEMENTS OF INDIVIDUALS

Pursuant to section 8 of the Internal
Security Act of 1950

INSTRUCTION SHEET—READ CAREFULLY

1. All individuals required to register under section 8 of the Internal Security Act of 1950 shall use this form for their registration statements.
2. Two copies of the statement are to be filed. An additional copy of the statement should be prepared and retained by the Registrant for future references.
3. The statement is to be filed with the Internal Security Division, Department of Justice, Washington, D. C.
4. All items of the form are to be answered. Where the answer to an item is "None" or "inapplicable," it should be so stated.
5. Both copies of the statement are to be signed. The making of any willful false statement or the omission of any material fact is punishable under 18 U. S. Code, 1001.

Appendix C—Statutes and Regulations Involved

6. If the space provided on the form for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and item shall be restated and the answer given.

FOR AN INDIVIDUAL:

a. Who is member of any Communist-action organization which has failed to file a registration statement as required by Section 7(a) of the Internal Security Act of 1950.

OR

b. Who is a member of any organization which has registered as a Communist-action organization under Section 7(a) of the Internal Security Act of 1950 but which has failed to include the individual's name upon the list of members filed with the Attorney General.

1. Name of the Communist-action organization of which Registrant was a member within the preceding twelve months.

2.(a) Name of Registrant.

(b) All other names used by Registrant during the past ten years and dates when used.

(c) Date of birth.

(d) Place of birth.

3.(a) Present business address.

(b) Present residence address.

Appendix C—Statutes and Regulations Involved

4. If the Registrant is now or has within the past twelve months been an officer of the Communist-action organization listed in response to question number 1:

(a) List all offices so held and the date when held.

(b) Give a description of the duties or functions performed during tenure of office.

The undersigned certifies that he has read the information set forth in this statement, that he is familiar with the contents thereof, and that such contents are in their entirety true and accurate to the best of his knowledge and belief. The undersigned further represents that he is familiar with the provisions of Section 1001, Title 18, U. S. Code (printed at the bottom of this form).*

/s/
(Signature) (Date)

/T/
(Name) (date)
(Print or type)

* 18 U. S. C., Section 1001, provides: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

